19

Department of Revenue

OFFICE of Collector

STATION Moen

M No 148

Dated 27/1-/34

(SUBJECT

Income tax South Kanara consolidated

Income III (Act 3913 & 1934

Ref.A3.No. 1053-38. South Kanara Collector's Office,

Mangalore, dated 16th May 1938.

From

M.R.Ry. Rao Bahadur M.V.Vellodi, Avl., B.A.,

Collector of South Kanara.

The Secretary to the Board,

Land Revenue and Settlement,

M a d r a s.

Sir,

Suits - Coondapoor - District Munsif's court - O.S.No. 39/38 - Assignment - Land - Giliyar - S.No. 190/4 -warg claim.

****

P 5-7 cf I enclose a copy of the plaint in the above suit, which is for a declaration that S.No. 190/4B of Giliyar village, Udipi Taluk belongs to the plaintiff and the 2nd defendant on P 7 cf joint absolute right as also for a direction to the 3rd ----- defendant (Government) to register the land either in the name of the plaintiff alone or the plaintiff and the 2nd defendant joint and for some other consequential reliefs.

2. The plot in dispute is a portion of S.No. 190/4 which is a piece of Government assessed waste dry land measuring 66 cents and assessed at Re.0-8-0 and formed the subject matter P 1 (L) of D.P.No. 293/1346 on the file of the Tahsildar of Udipi Taluk the proceedings having been instituted on the darkhast application of the 1st defendant, Venkappa Aithala. The Shanbhogue divided Sketch at the plot into three sub-divisions, A, B and C and recommended P 3 (L) their assignment to Subbanna Aithala (2nd defendant) Kalinga alias Narasimha Aithala (plaintiff) and Venkappa Aithala (applicant - 1st defendant) respectively. The Revenue Inspector who visited P.A. 53-55 the locality found that the 2nd defendant did not possess any land in the vicinity and had therefore no real claim over the land. The plot formed common kumaki to the plaintiff and the 1st defendant and corner-kumaki to one Venkatramana Mayya, who, however, relinquished his claim in favour of the 1st defendant. The Revenue Inspector therefore re-apportioned the plot between the

plaintiff and the 1st defendant, according to which the plaintiff could get a triangular pice, measuring only 22 cents while the 1st defendant could get the remaining portion measuring 44 cents. The Tahsildar did not agree to this and ordered a fresh apportionment - please see his notes of inspection dated 20-5-37. By this fresh apportionment, the plaintiff and the 1st defendant got equal shares of 33 cents each.

3. A perusal of the eye-sketch will show that the entire plot, S.No. 190/4 has been enclosed along with the major portion of S.No. 190/12 - hosagame land of the 1st defendant which indicates that it is not in the exclusive enjoyment of the plaintiff from whose kadim lands it is shut off. The Revenue Inspector's report further goes to show that both the darkhast plot and the 1st defendant's hosagame land S.No. 190/12 together form a compact block, being of the same level and containing tree-growth of the same height and species. The inference therefore is that the entire plot has been in the exclusive enjoyment of the 1st defendant and that neither the plaintiff nor the 2nd defendant has any sort of right over it. But the 1st defendant claimed in his darkhast application only 35 cents and his claim for the whole plot came in only in his statement dated 22-11-36. The fresh apportionment made by the Tahsildar does not therefore seem inequitable.

4. The land, in this case, was registered as assessed waste - dry at the last settlement i.e. more than 30 years ago and the registry ~~contained~~ continued as such till the land was assigned in June 1937. Neither the plaintiff and the 2nd defendant nor their predecessors-in-title objected to such registry till the land was applied for on darkhast by the 1st defendant and darkhast proceedings were instituted. Their present warg claim is long time barred. In these circumstances, the suit notices sent in by them were recorded. The Government Pleader

In the Court of the District Munsif of Coondapoor.

Original Suit No. 39 of 1938.

Between:

Kalinga alias Narasimha Aithala .. Plaintiff.

and

1. Venkappa Aithala.
2. Subbanna Aithala and) Defendants.
3. The Madras Provincial Government represented by the Collector of South Kanara District.

Plaint under section 26 and Order 7 rule 1 of the Code of Civil Procedure.

The abovenamed plaintiff begs to state as follows:-

1. That the Plaintiff Kalinga alias Narasimha Aithala is the son of Subbanna Aithala residing in Giliyar village, Udipi Taluk.

The address for the service of all processes on the plaintiff is as above.

2. That the 1st defendant Venkappa Aithala is the son of Sadashi Aithala residing in Giliyar village, Udipi Taluk. That the 2nd defendant Subbanna Aithala is the son of Parameshwara Aithala residing in Kotathattu village, Udipi Taluk. That the 3rd defendant is the Madras Provincial Government represented by the Collector of South Kanara District.

3. That S.F.No. 190/4 of Giliyar village, Udipi Taluk belongs to the family of the plaintiff and the 2nd defendant on muli warg right, it forms part of warg No.3 of Harthattu village of the name of Venkatapathi Aithala the ancestor of Plaintiff and 2nd defendant and that in any event the family of plaintiff and 2nd defendant has been in possession and enjoyment of the same for more than 100 years adversely to the Government and thus the plaintiff and the 2nd defendant are absolutely entitled to the property.

4. That under the partition and other arrangements effected among the members of the family of plaintiff and 2nd defendant, the right to the southern half of the said plot is in the plaintiff and the right to the northern half of the same is in the 2nd defendant.

5. That at the time of Settlement it appears that the said plot has been by mistake recorded as assessed waste in the settlement register.

6. That the 1st defendant taking advantage of this mistake in the Settlement register applied to the Tahsildar of Udipi Taluk for grant of the said plot on darkhast to him in D.R.No. 293/1346.

7. That the plaintiff and the 2nd defendant requested the Tahsildar for the issue of patta to them for the said plot on muli warg right; but the Tahsildar has divided the plot and issued patta to the plaintiff for the western half demarcating it as S.F.No.190-4A and to the 1st defendant for the eastern half demarcating it as S.F.No.190-4B.

Proprietory right

8. That the plaintiff being aggreived by the Tahsildar's action sent a notice in writing dated 28-7-37 to the Collector of South Kanara District as required under section 80 of the Code of Civil Procedure.

9. That the 1st defendant threatens to trespass on and disturb plaintiff's enjoyment of the right demarcated as S.F.No. 190-4B and described in A schedule hereto.

10. That the plaintiff has been in possession of the said S.F.No.190-4B for more than 12 years on absolute right and the defendant has no right to enter on any portion of the same.

11. That as it is necessary that this suit should be tried in the presence of the 2nd defendant and as he has refused to join with the plaintiff in bringing this suit, he is made a party defendant.

12. That the plaintiff is constrained to bring this suit for obtaining the reliefs stated below.

13. That the cause of action for this suit arose on 1.6.1937, the date of the Tahsildar's order.

14. The value of the subject matter of this suit for purposes of court fees and jurisdiction is Rs.10.0.0 as per section 7 IV c and d of the Court Fees Act and Court Fee of

1.0 is paid as per Schedule I Article 1 of the same Act.

15. The plaintiff prays for a decree:-

(1) declaring that the property described in A schedule hereto belongs to plaintiff and 2nd defendant on absolute right and directing 3rd defendant to issue patta for the same to plaintiff or to plaintiff and 2nd defendant. This relief is valued for the ----- purpose of Court Fees at 5 times 0.4.0 the assessment of the plot which is ..... Rs.1. 4. 0.

(ii) restraining 1st defendant by permanent injunction from trespassing upon and disturbing plaintiff's enjoyment of the said plot. This relief is valued for the purpose of Court Fees at Rs.8.12.0 - Rs.8.12.0.

(iii) directing defendants 1 and 3 to pay plaintiff the costs of this suit. ...

Total for the purpose of court fees is Rs.10. 0. 0

(True Copy of plaint)

Coondapoor,
Dated 31.1.1938.

Plaintiff's Advocate.

A ತೆಗ್ಯಲು - ಉಳಿವ ತಾಲ್ಲ ಸಳಯಾಂಲು ಗ್ರಾಮದ ಬಾಬ್ತು

ಸರ್ವೆ ನಂ. ಸರ್ವೆ ನಂಬ್ರ ಸಿಸಂ ಎಕ್ಕರೆಗೆ ತೀರ್ವೆ.

190.4B ಪೈಂ೨ 0.33 0.4-0

ಮತ್ತೆ ಇನ್ನಷ್ಟಾಂಯುವ ಮೂರ ಮಳಿಕ್ರಾಗ್ಲೂ ಪಣ್ಯೆಕೆ ನಮ್ಮಾದಿ.

(True Copy)

For Collector.

15-2-38

25.2.38.

In the Court of the District Munsif of Coondapoor.

Original Suit No.39 of 1938.

Kalinga alias Narasimha Aithala — Plaintiff.

versus

1. Venkappa Aithala
2. Subbanna Aithala — Defendants.
3. The Province of Madras (represented by the Collector of South Kanara)

Written statement of the third defendant under Order VIII R.1 C.P.C. dated

The 3rd defendant begs to state as follows:-

1. Plaintiff's suit is frivolous, vexatious and unsustainable at law. It is brought in collusion with the 2nd defendant.

2. This defendant emphatically denies that S.F.190/4 of Giliyar village, Udipi Taluk belongs to the family of the plaintiff and 2nd defendant on muli warg right, that it forms part of warg No.3 of Harthattu village of the name of Venkatapathi Aithala, and that the family of the plaintiff and the 2nd defendant has been in possession and enjoyment of the same for more than a hundred years adversely to the ------ Government and that the plaintiff and the 2nd defendant are thus absolutely entitled to the suit property.

3. This defendant submits that the Government is not aware of the partition and other arrangements effected among the members of the family of the plaintiff and 2nd defendant and that in any event such arrangements are not binding upon the Government.

4. S.No.190/4 of Giliyar village was ~~demarcated~~ registered as assessed Government waste land at the time of the settlement to the knowledge of the plaintiff and the 2nd defendant and the registry continued as such till the assignment thereof in D.R.No.293/1346 without any objection being raised by the plaintiff and the 2nd defendant. The present suit of the ------ plaintiff is therefore long barred by limitation.

5. It is denied that plaintiff has been in possession

f the plaint properties at any time within 12 years ext preceding the date of suit. ~~Plaintiff's suit is therefore not legally sustainable in law.~~

6. It is denied that the plaintiff has been in exclusive possession of the plaint properties continuously in his own right till the date of the suit, for the statutory period of sixty years. It is further denied that he has any title to the plaint properties. Plaintiff has therefore no valid right to the plaint properties.

7. The suit is opposed to section 42 of the Specific Relief Act and is therefore not sustainable

8. The suit plot was at the absolute disposal of the Government and the plaintiff is not entitled to question the assignment thereof.

9. The cause of action mentioned in the plaint is not correct.

10. All allegations in the plaint not specifically traversed are hereby denied and this defendant puts the plaintiff to strict proof of the same.

11. The plaintiff is not entitled to claim any relief in this suit.

12. For these and other reasons to be urged at the time of hearing, this defendant prays that plaintiff's suit may be dismissed with costs of this defendant with interest thereon at six per cent.

Dst Collector.

Ref.No.A.311/38. M a n g a l o r e.

Dated 5-5- 1938.

From

M.R.Ry. K. Sadashiva Rao, Avl., B.A., M.L.,

Government Pleader, M a n g a l o r e.

To

The Collector of South Kanara.

S i r,

SUITS - Coondapoor District Munsif's Court - O.S.No. 39/38 - Assignment - Giliyar village - S.No.190/4 Written statement.

Ref:- A3.No.1053/38 dated 3-5-1938.

*****

The suit is filed by the plaintiff Kalinga alias ---- Narasimha Aithala for a declaration that he and the 2nd ----- defendant have acquired title to the plaint properties by --- adverse possession by the time the property was assigned on Darkhast to the 1st defendant and as such the Government had lost the power to disposition thereon. Assuming that the plaintiff has protected his title by adverse possession the suit is maintainable under Section 42 of the Specific Relief Act for the declaration of his title as against persons ----- interested in disputing it.

2. The plaintiff mainly bases his suit on the ground of adverse possession. The burden of proving adverse possession is on the plaintiff and he must prove that he has been openly in exclusive possession of the property, continuously for over the statutory period till the date of suit. The plot in ---- question is a punja land containing only trees of spontaneous

growth. There is a general presumption that waste land belongs to the crown. Further in the case of waste lands the presumption is that possession follows title. Therefore the plaintiff has to show much more than "sporadic invasions of a conveniently adjacent jungle" to prove possession and this onus will naturally be a difficult one to discharge.

3. The next point to be considered is whether the ---- possession was continuous. At the time of the settlement it is admitted by the 2nd defendant that patta was refused in repect of the plaint plot and he was asked to apply to the Tahsildar for Darkhast. Plaintiff does not clearly allege in his plaint that he was not aware till the date of the ------ Darkhast proceedings that the plot was not included in his patta, but it can be inferred from para 5. If, however, it is proved from the production of notices or rough patta ----- that plaintiff had notice at the time of settlement of the non-inclusion then there is no continuity of possession for the statutory period.

4. The plaint plot has been enclosed along with S.No. 190/12 and the Revenue Inspector reports that they form a compact block of the same level containing tree growth of the same height and species. The 1st defendant lives in S.No. 190/12 and there is evidence that at least the plaint plot was in possession of the 1st defendant, from a considerable time. In that case plaintiff has no possession at the date of suit, and he cannot base his suit on adverse possession. His suit for bare declaration does not lie and he has further to prove that he was in possession within 12 years before suit.

5. I am of opinion that there is a fairly strong case

for defendants 1 and 3 and that it may be defended.

6. Paras 4 to 6 of the draft written statement may be recast as follows:-

Para No.4. S.No.190/4 of Giliyar village was demarcated as assessed Government waste ---- land at the time of the settlement to the ----- knowledge of the plaintiff and the 2nd defendant and the registry continued as such till the ---- assignment thereof in D.R.No.293/1346 without -- any objection being raised by plaintiff and 2nd defendant. The present suit of the plaintiff - is therefore long barred by limitation.

Para No.5. It is denied that plaintiff has been in possession of the plaint properties at any time within 12 years next preceding the date of suit. Plaintiff's suit is therefore -- not legally sustainable in law.

Para No.6. It is denied that the plaintiff has been in exclusive possession of the - plaint properties continuously in his own right till the date of the suit, for the statutory -- period of sixty years. It is further denied -- that he has any title to the plaint properties. Plaintiff has therefore no valid right to the plaint properties.

Otherwise the draft written statement is in order. --- The papers sent to me are herewith returned.

(Sd) x x x
for Government Pleader.

U.R./16.5.

N1 J7H

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..	27/5	
When copied ..	27/5	
When examined ..	27.5	
When signed ..		
When despatched.		

SUBJECT :— Suits — (South Kanara) — Coondapur Dt Munsiff Ors 39/38 — Giliyar Village — Sy No 190/4 — Assign defence — Sanctioned

READ AGAIN ——————, dated ——————19——.

" " ——————, " ——————19——.

READ *ALSO* :—

No. ——— From the ——— No. ——— dated ——— 19——.

A. 2850/38 Collr of South Kanara 1053/38 dt 16/

" ——— " ——— " ——— " ——— 19——.

~~Order~~ Resolution ~~Rout.~~ Ms. No. 1481, dated 27.5 19 38.

The Board sanctions the defence of the suit.

2/. The draft written statement as revised by the Board and appended to these proceedings should be filed in the Court

119
27/5
KG
27/5/38

No. 027

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters not exceeding 2½ tolas or one ounce in weight or on which no acknowledgment is due.

Rs. 7 As. 0

Date-stamp.

Received a registered* letter addressed to

* Write here "letter," "postcard," "packet" or "parcel" as necessary.

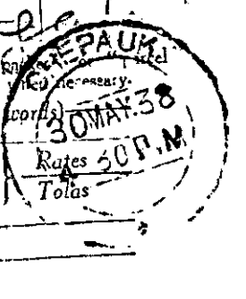
Initials of Receiving Officer:

If insured { *Insured for Rs. (in figures)* ——— *(in words)* ———

Weight ——— *Tolas*

Insurance fee Rs. ——— *As.* ——— *(in words).*

Name and address



Suits — (South Kanara)
Coondapur Dr Munsiff
Oreo 39/38 — Ejectment
Use — Rs 190/4 — Wrongful
Defence — Lawful
A 250/38 from the Court
of South Kanara Pp 1-3 of C

To Leey

Please see the
Collis letter at Pp 1-3 of
for the facts of the
case.

21. The suit land
was registered at the
time of the Settlement
as a Govt assessed
waste. Though the
Settlement took place
more than 30 years
ago the plaintiff,
or the second defendant
or their predecessors-
in-title did not
object to such registry
all these years. The
plaintiffs claim that
the suit land belongs

defendant as their private property is not tenable The defence of the pvt may be sanctioned as recommended by the Coll and the local Govt and the written statement as revised may be approved

~~Accordingly~~

WA
25/5
RK
26/5/20

WA
27/5
RK
27/5/20

To Secy
Draft submitted

Revised draft written statem

The suit is not sustainable at law and is brought in collusion with the second defendant

The allegations in para 3 of the plaint are emphatically denied and are absolutely false

The partition etc referred to in para 4 of the plaint are not admitted and are not binding on this defendant

Sno 190/4 of Giliyar villa was registered as assessed Govt waste at the time of the settlement to the knowledge of the plaintiff and the second defendant The registry continued as such till its assignment by the Tahsildar in his DR 293/46. The suit is therefore long barred by limitation

No defendant denies that that the plaintiff has been in possession of the suit land at any time within 12 years next preceding the date of the

suit or continuously for
the statutory period of six
years. The plaintiff has
no right or title to the
suit land and his suit is
untenable

6. The suit is opposed
section 42 of the Specific
Relief Act and is therefor
not maintainable.

7. The suit land was a
the absolute disposal of the
Govt, and the plaintiff i
not entitled to question
its assignment

8 The Cause of action
mentioned in the plaint
is not correct

9. All the allegations in the
plaint not specifically
traversed herein are here
denied, and the plaintiff
put to strict proof of the sa

10. The plaintiff is not en
to any relief in the suit

11. The defendant therefor
prays that the suit sha
dismissed with costs.

CIRCULATION CHECK SLIP.

B. P. No. Mis/1481

Dated 27/5/38

Single Member

~~Two Members~~

~~Full Board~~

	I.A.	A.D.S - L.R.,	A.S. L.R.	A.S. Sett.	A.S. Sept Rev.	J.S. (F)	J.S. (A)	Secy.	M-3	M.2	Mil.
(1) Open file seen by						✓				✓	
(2) Final draft seen by						✓					
(3) Now circulated to											
(4) Initials											16/6/38

Passed for record.

** Secretary
Joint Secretary

A.S. (L.R.)

A.S. (Sett.,)

** A.S. (Sep.Rev.)

A.D.S.L.R

I. A.

4/6

** Note: - Entries not required to be scored out.